STATE OF MICHIGAN

COURT OF APPEALS

RAYMOND D. LOFGREN, TRUDY A. LOFGREN, and LOFGREN HARBORSIDE, INC.,

Plaintiffs-Appellants,

v

CITY OF CHEBOYGAN and DUNCAN BAY BOAT CLUB ASSOCIATION,

Defendants-Appellees,

and

CONSUMERS ENERGY and DR. DENNIS PAULL,

Third-Party Defendants-Appellees.

UNPUBLISHED
January 24, 2003

No. 236111
Cheboygan Circuit Court
LC No. 00-006782-CH

Before: O'Connell, P.J., and Griffin and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by right the circuit court's order granting defendant City of Cheboygan's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) in this real property matter. We affirm.

Plaintiffs Raymond D. and Trudy A. Lofgren[1] entered into an agreement in 1988 with defendant Duncan Bay Boat Club Association's predecessor in interest, Duncan Bay Development Company, to dedicate portions of their respective properties to the City as easements for two public roadways. The proposed locations of the roadways are near Duncan Bay in Cheboygan County, and one of the roadways is an extension of Duncan Avenue. The agreement provided, in pertinent part:

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[1] Both plaintiffs complaint and amended complaint wrongly state that plaintiff Lofgren Haborside, Inc., is a *defendant*. Rather, Harborside is the Lofgrens' development company.

RECIPROCAL ROAD EASEMENT

* * *

4. The parties make an irrevocable offer to the City of Cheboygan to *dedicate* the land described in attached Exhibit E for *roadway* purposes *whenever* it shall accept the same as a *public thoroughfare*.

* * *

EXCAVATION LICENSE AGREEMENT

* * *

7. This license granted by this Agreement is irrevocable subject to an breach or failure on the part of the Lofgren [sic] to fulfil [sic] their part of this agreement shall give Duncan the privilege of cancelling [sic] same.

8. Changes or additions to this Agreement *must be in writing* and executed by Duncan and Lofgren.[2] [Emphasis added.]

In 1999, the City accepted part of the dedication offer. On July 13, 2000, the City sent a letter to plaintiffs accepting the remaining part of the offer. On July 25, the Cheboygan City Council met and formally accepted the remaining part of the offer. Plaintiffs claim they delivered a letter to that meeting attempting to revoke the remaining part of the offer for dedication. According to the minutes of the meeting, Raymond referred briefly to his intent to revoke the remaining part of the offer. Nevertheless, later in the meeting, the City voted to accept the remaining part of the dedication offer. Plaintiffs' suit for declaratory judgment followed, first naming the City and the Boat Club. The City responded that they had already accepted the dedication offer and owned the property outright. Plaintiffs' amended complaint then named defendant Consumers Energy and defendant Dr. Dennis Paull for claiming an easement and right-of-way, respectively, on plaintiffs' property.

The first issue on appeal is whether the trial court erred in holding that the parties' agreement did not violate the codified common law rule against perpetuities,[3] considering that

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[2] The agreement also provided a water easement.

[3] The rule against perpetuities is codified in the uniform law, see MCL 554.53, in part as follows:

(1) A nonvested property interest is invalid unless 1 or more of the following are applicable to the interest:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive.

(b) The interest either vests or terminates within 90 years after its creation.

(continued…)

the agreement stated that the license was "irrevocable"[4] and did not establish a deadline for acceptance. We hold that the trial court's decision was correct.

This Court reviews a decision on a summary disposition motion de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although the City brought its motions for summary disposition pursuant to MCR 2.116(C)(8) and (10), the parties and the circuit court relied on documentary evidence beyond the pleadings. In this situation, we treat the motions as having been granted pursuant to MCR 2.116(C)(10) and we examine both the pleadings and additional documents to see whether they establish a genuine issue of material fact to warrant a trial. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000); *Spiek, supra* at 337, citing *Singerman v Municipal Bureau, Inc*, 455 Mich 135, 138; 565 NW2d 383 (1997). This Court will give the nonmoving party the benefit of all reasonable inferences when determining whether to grant summary disposition. *Betrand v Alan Ford, Inc*, 449 Mich 606, 615; 537 NW2d 185 (1995).

As a threshold matter, we hold that the plain terms of plaintiffs' agreement in this case constitutes an offer to dedicate a piece of land to the public. Two things are required to form a public dedication: "[1] a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use, and [2] acceptance by the proper public authority." *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996); see also *Martin v Redmond*, 248 Mich App 59, 66; 638 NW2d 142 (2001). First, according to the agreement itself, the plat was recorded. Furthermore, the agreement stated, "[t]he parties make an irrevocable offer to the City of Cheboygan to dedicate the land described in attached Exhibit E for roadway purposes whenever it shall accept the same as a public thoroughfare." This establishes plaintiffs' intent to dedicate. Second, the City accepted the offer of dedication by letter before plaintiffs attempted to revoke it, and the City officially voted to accept the dedication at its City Council meeting. *Kraus*, *supra*. Thus, the offer to dedicate to the public was properly accepted.

In our view, this agreement qualified as one involving public welfare purposes exempt from the rule against perpetuities. MCL 554.382 defines public welfare purposes in the property code as follows: "all lawful purposes beneficial to the public as a whole." MCL 554.381 also provides: "No statutory or common law rule of this state against perpetuities or restraint of

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(…continued)

* * *

> (4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded. [MCL 554.72.]

[4] The "irrevocable" language is from paragraph 7 of the "excavation license agreement" section of the agreement. However, the paragraph only states that the license described in that section is irrevocable, not that the whole agreement is irrevocable. Nonetheless, the last paragraph of the agreement, paragraph 8 of the "excavation license agreement" section, states that no change may be made to refers to any part of the agreement except in writing.

alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes." See also MCL 554.64(c) (the rule of perpetuities does not apply to a "terminable interest held for public . . . purposes"); MCL 123.871 ("[a] gift [of real property] shall not be invalid because of . . . [the] rule against perpetuities"). Moreover, a lawful offer for a public dedication need not establish a firm deadline for acceptance. See *Christiansen v Gerrish Twp*, 239 Mich App 380, 390-391; 608 NW2d 83 (2000) (acceptance of public dedication made 20 to 30 years earlier is timely). The dedication offer at issue was accepted approximately twelve years after it was made.

Further, the plain language of the agreement stated that the offer could not be revoked unless the parties stated so in writing. We must enforce the plain language of the agreement. See *Terrien v Zwit*, 467 Mich 56, 71-72; 648 NW2d 602 (2002) (theory of freedom of contract allows persons to agree to any terms they like). Consequently, because the offer for a public dedication was lawfully accepted before revoked, the rule of perpetuities does not apply. MCL 554.381; MCL 554.64(c); MCL 123.871. Thus, the trial court did not err on this ground.

The second issue on appeal concerns whether the agreement amounted to an unlawful restraint on alienation. As we previously stated, a lawful offer for a public dedication need not establish a deadline for acceptance to avoid making an unlawful restraint on alienation. See *Christiansen*, *supra*; see also MCL 554.381 (unlawful restraint on alienation doctrine does not apply to publicly dedicated property). Therefore, we affirm the trial court's decision.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Jane E. Markey